

SUBCHAPTER B : LOCAL ADMINISTRATION OF THE OSSF PROGRAM

§285.10. Delegation to Authorized Agents.

(a) Requirements/Procedures.

(1) Local governmental entities which desire to become authorized agents of the commission shall request such in writing to the executive director.

(2) Upon request, the executive director shall forward to the entity a description of the process of delegation and a copy of the model order/ordinance. Any changes to the model order/ ordinance by the local entity based on local conditions must be consistent with this chapter. The executive director shall be the sole and final authority in determining the acceptability of proposed changes from the model order/ordinance. A local government entity which wants to be designated an authorized agent for the OSSF program shall follow the following procedures:

(A) Upon request, the executive director shall provide model orders or ordinances to local entities.

(B) The executive director consults with local authorities as to specific procedures and requirements to obtain authorized agent status.

(C) The local government entity shall draft an order or resolution regulating OSSFs within its jurisdiction which meets the requirements of §366.032 of the Texas Health and Safety Code. In the event that the local government entity drafts a proposed order which is different from the model order/ordinance, the local government entity shall submit the proposed order/ordinance to the executive director for review and comment prior to notice being published. Within 30 days of receipt of the proposed order/ordinance, the executive director shall review the proposal and provide comment to the local government entity on whether the proposed order/ordinance meets the agency's minimum requirements.

(D) The local government entity shall cause notice to be published, in a newspaper regularly published and of general circulation in the area of jurisdiction, of a public hearing to be held to discuss the adoption of the proposed order or resolution;

(E) The local government entity shall hold a public meeting to discuss the proposed order or resolution;

(F) The local government entity shall adopt that order or resolution;

(G) The local government entity shall send a certified copy of the minutes of the meeting which adopted the order or resolution;

(H) The local government entity shall send a certified copy of the order or resolution;

(I) Upon receipt of the complete package requesting delegation, the executive director will review to see that it complies with the requirements of this chapter and Chapter 366 of the Health and Safety Code. If found to be compliant, the executive director will notify the local entity by mail of their authorized agent status and the date the authorized agent shall assume jurisdiction of the OSSF program. The authorized agent shall administer its OSSF program in accordance with its approved OSSF waste disposal order/ordinance. All authorized agents shall maintain their orders/ordinances in accordance with the minimum requirements of this chapter.

(b) Amendments to existing orders/ordinances. The amendment procedure may be initiated by the authorized agent in accordance with subsection (a) of this section. The executive director may require periodic revisions or renewals of OSSF orders/ordinances for compliance with new rules or regulations.

(c) Resolution of nuisance complaints by an authorized agent. A major activity of any authorized agent is the satisfactory resolution of nuisance complaints involving OSSFs. An authorized agent may require a property owner to repair a malfunctioning OSSFs on the owner's property not later than the 30th day after the date which the owner is notified by the authorized agent of the malfunctioning system.

(d) Authorized agent's reporting requirements. Each authorized agent shall provide to the executive director a detailed monthly report of OSSF activities as prescribed by the executive director. Categories in this report shall include, but not be limited to the following:

- (1) subdivision reviews;
- (2) complaint and enforcement activities;
- (3) information on the numbers and types of OSSFs permitted; and
- (4) administrative activities performed by the authorized agent.

(e) Relinquishment of authorized agent delegation. If an authorized agent decides to relinquish its delegation to regulate OSSFs under the regulatory authority granted by Chapter 366 of the Health and Safety Code and this chapter, the authorized agent shall adhere to the following procedures:

(1) The authorized agent shall inform the executive director by certified mail at least 30 days prior to publishing the notice that it wishes to relinquish its OSSF order.

(2) The authorized agent shall publish notice, indicating its intent to relinquish, in a newspaper regularly published or circulated in the area of jurisdiction prior to taking further action to relinquish.

(3) The authorized agent shall send the executive director copies of the following: the public notice, a publisher's affidavit of public notice, and a certified copy of the entity's minutes of the meeting in which it formally considered relinquishment of its delegation.

(4) The executive director shall process the request for relinquishment and may issue an order relinquishing the authority to regulate OSSFs within an authorized agent's jurisdiction or may refer the request to relinquish to the commission.

(5) Prior to issuance of a relinquishment order the local governmental entity and the executive director shall determine the exact date the authorized agent would surrender its authorized agent designation to the executive director.

(f) Revocation of authorized agent delegation.

(1) An authorized agent must consistently enforce this chapter and Chapter 366 of Health and Safety Code.

(2) An authorized agent's OSSF order may be revoked at any time by order of the commission for good cause after opportunity for public hearing is given in accordance with Subchapter C of the Texas Administrative Procedures Act.

(3) Failure by an authorized agent to consistently enforce this chapter, or Chapter 366 of the Health and Safety Code is good cause for revocation.

(4) When the executive director determines that revocation is warranted a petition seeking revocation may be filed by the executive director with the commission requesting that a public hearing be held.

(5) If the executive director files a petition for revocation with the commission, notice shall be given to the authorized agent of the time and place for the hearing not less than ten days prior to the hearing by certified mail, return receipt requested.

(6) If an authorized agent wants to consent to revocation, a written request or a written consent and waiver may be filed with the executive director not later than ten days after the receipt of notice of the petition to revoke. If the authorized agent requests or consents to revocation, the executive director may revoke without the necessity of a public hearing or commission action. The executive director shall notify the commission of each revocation of an authorized agent's authority.

(7) Upon completion of a public hearing the commission may do any of the following:

(A) Issue an order revoking the authorized agent's delegation;

(B) Issue an order placing the authorized agent on probation for a specified period of time; or

(C) Take no action on the request.

(8) Upon issuance of a revocation order by the commission, the executive director shall assume responsibility for the OSSF program in the former agent's jurisdiction.

Adopted January 20, 1997

Effective February 5, 1997

§285.11. Review of Locally Administered Programs.

The executive director shall review not more than once per year an authorized agent's locally administered program for adequate performance and compliance with requirements established by Chapter 366, Texas Health and Safety Code, this chapter, and the order/ordinance adopted by the authorized agent. If the executive director's review determines that an authorized agent does not enforce the commission's minimum requirements for OSSFs, the commission may hold a hearing to determine whether the entity shall lose its designation as an authorized agent in accordance with §285.10(f) of this title (relating to Delegation to Authorized Agents).

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